

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: 7/7/08
DATE FILED: 7/7/08

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

XETHANOL CORP., :
Plaintiff, :
-against- :
DEUTSCHE BANK SECURITIES, INC., et al., :
Defendants. :
----- X

ALVIN K. HELLERSTEIN, U.S.D.J.:

On July 2, 2008, the parties appeared before me for oral argument on defendants' motion to dismiss, pursuant to Fed. R. Civ. P. 12(b)(6). For the reasons stated on the record, I rule as follows.

As to the first cause of action, plaintiff's claim of a violation of § 12(a)(1) of the Securities Act of 1933, the motion to dismiss is denied. As to the second and third causes of action, plaintiff's claim of a violation of § 10(b) of the Exchange Act of 1934 and SEC Rule 10b-5, and common law fraud, respectively, the motion is granted. Plaintiff is granted leave to replead in accordance with my rulings by July 22, 2008. Failure to do so will result in dismissal, with prejudice, of those claims. An answer or motions by the defendants must be filed by August 15, 2008. The parties are to appear before me on September 19, 2008 at 9:30 a.m. for a case management conference.

SO ORDERED.

Dated: July 2, 2008
New York, New York



ALVIN K. HELLERSTEIN
United States District Judge